IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

A.O. No. 1316 Of 2001

Oriental Insurance Co. Ltd.
Through its Divisional Manager
Divisional Office, Bhotia Parao, Haldwani
District- Nainital ... Appellant

Versus

1. Sri Sher Singh S/o Sri Ummed Singh
   R/o Apar Sera, Palmilai,
   P.O. Chipal Ghat
   Distt. Pauri Garhwal

2. Sri Shiv Ratan S/o Sri Kuwar Singh
   Village- Patal, Post – Beerokhal (Tauli),
   Distt. – Pauri Garhwal
   At present – T.T. in G.M.O.U.Ltd. Pauri... Respondents

Prabhat Pande, learned counsel for the appellant.
Ms. Seema Sirohi, Advocate for the respondents.

Hon'ble B.S. Verma, J.

This is an appeal against the judgment and award dated 23.04.2001 passed by M.A.C.T./District Judge, Pauri Garhwal in Motor Accident Claim Case No. 148 of 1997 whereby the Tribunal has awarded Rs. 35,000/- alongwith interest @ 12% p.a. compensation to the claimant.

Brief facts giving rise to present appeal are that the respondent-claimant had filed Claim Petition for Rs. 5,50,166/- for his injuries sustained in motor accident on 12.04.1997 when he was going in Bus No. U.T.S.1029 alongwith marriage party to Kotdwar. When the offending bus reached near Chiplaghat, it met with an accident and rolled into the khad. In the said accident all the passengers travelling in the bus sustained injuries and out of which 25 passengers were succumbed to their injuries

sustained by them. The bus was comprehensively insured with the appellant-Insurance Company. The claimant had stated that the accident took place due to rash and negligent driving by the bus driver.

The opposite parties contested the claim petition and claimed that the accident took place due to rash and negligent driving. Their versions of the accident are that the accident took place due to mechanical fault of the bus. The insurance company in its written statement had alleged that at the time of accident, the bus was overloaded and the bus was being driven in violation of permit condition and without valid license.

The Tribunal after going through the pleadings of the parties, framed the necessary issues.

The learned Tribunal came to the conclusion that the accident was caused due to rash and negligent driving by the driver of the bus. It was further alleged that the claimant is entitled for compensation of Rs. 35,000/- severally and jointly from the opposite party Nos. 1 and 3, i.e. Driver and Insurance Company.

Feeling aggrieved by the said judgment and award, the Insurance Company had preferred the appeal before this court.

I have heard learned counsel for the parties and perused the record.

In the course of the argument, learned counsel for the parties submitted that the controversy involved in the present appeal stood settled by this Court's Judgment dated 28.07.2004 in **A.O. No. 316 of 2004 Oriental Insurance Company Ltd. Vs. Smt. Rajula Devi & others and 12 appeals** preferred by the Oriental Insurance Company Ltd. against the award of M.A.C.T.

passed in different claim petitions arising out from the same accident and the appeals were dismissed on merit. Since the controversy involved in the present appeal is squarely covered by the above judgment dated 28.07.2004, learned counsel for the appellant-Insurance Company fairly conceded this fact that all the points raised in the present appeal have already been decided by this court. Hence in view of the above facts, the present appeal is liable to be dismissed on merit in terms of the judgment of this court.

Accordingly, the appeal is dismissed on merit in terms of judgment of this Court dated 28.07.2004 passed in A.O. No. 316 of 2001, Oriental Insurance Company Ltd. Vs. Smt. Rajula Devi & others.

The amount deposited in this court shall be remitted to the M.A.C.T. concerned. No order as to costs.

(B.S. Verma, J.)

5th August, 2006
Shiv